

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ABDUL HOWARD,

Petitioner,

v.

ATTORNEY GENERAL OF THE STATE  
OF NEVADA, et al.,

Respondents.

Case No. 2:12-cv-01613-MMD-PAL

ORDER

The petitioner, who is not in custody, presented the Court with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. The petition was dismissed because the Court lacks jurisdiction to hear a habeas petition pursuant to 28 U.S.C. § 2254 when it was filed after the petitioner had been released from custody. (Dkt. no. 2.) Reconsideration of the dismissal was denied. (Dkt. no. 7.) Petitioner filed an appeal. (Dkt. no. 8.)

The Court must now decide whether to issue a certificate of appealability. In order to proceed with an appeal from this Court, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.* The Supreme Court has held that a petitioner “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

1 The Supreme Court further illuminated the standard for issuance of a certificate  
2 of appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Court stated in that  
3 case:


4 We do not require petitioner to prove, before the issuance of a COA, that  
5 some jurists would grant the petition for habeas corpus. Indeed, a claim  
6 can be debatable even though every jurist of reason might agree, after the  
7 COA has been granted and the case has received full consideration, that  
8 petitioner will not prevail. As we stated in *Slack*, “[w]here a district court  
has rejected the constitutional claims on the merits, the showing required  
to satisfy § 2253(c) is straightforward: The petitioner must demonstrate  
that reasonable jurists would find the district court’s assessment of the  
constitutional claims debatable or wrong.”

9 *Id.* at 1040 (quoting *Slack*, 529 U.S. at 484).

10 The Court has considered the issues raised by petitioner, with respect to whether  
11 they satisfy the standard for issuance of a certificate of appealability, and the Court  
12 determines that none meet that standard. Moreover, the Court has also considered the  
13 procedural posture of the case and the basis for the dismissal and determines that  
14 jurists of reason would not find the dismissal debatable. Accordingly, the Court will deny  
15 petitioner a certificate of appealability.

16 It is therefore ordered that petitioner is denied a certificate of appealability.

17 DATED THIS 1<sup>st</sup> day of October 2013.

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21 MIRANDA M. DU  
22 UNITED STATES DISTRICT JUDGE  
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